THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.790 of 2006

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24.01.2006

Between:

Gavireddi Atchayamma, W/o.Appanna

... Petitioner

AND

The District Panchayat Officer, East Godavari District, Kakinada

And another

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.790 of 2006

ORDER:

The petitioner obtained a licence from Gollalamamidada Gram Panchayat for running chicken shop in the said village. The licence was granted on 18.11.2005. It appears, the local residents made a complaint before the District Collector. Their grievance was that the boiler chicken shop is causing pollution in the area. It appears, the said representation was forwarded to the Gram Panchayat, who issued a notice on 30.11.2005 to remove the chicken shop, as it is causing pollution. Majority of the members of the Gram Panchayat passed resolution on 09.12.2005 for removal of the chicken shop and accordingly, the petitioner was informed to remove the chicken shop and an order was issued to that effect. Aggrieved by the same, the petitioner preferred a writ petition being W.P.No.25962 of 2005 before this Court. By order dated 06.12.2005, this Court disposed of the said writ petition giving liberty to the petitioner to prefer an appeal before the first respondent against the memo issued by the Gram Panchayat. Accordingly, the petitioner preferred appeal and the same was dismissed by impugned proceedings dated 03.1.2006. The petitioner again approached this Court for redressal, by filing this writ petition.

The learned Counsel for the petitioner submits that the petitioner is running chicken shop in an area, which is far away from residential houses and the allegation that

the shop is causing pollution is not correct. He nextly submits that the first respondent failed to give any reasons rendering impugned order unsustainable. Lastly, it is his submission that the first respondent did not consider the contentions raised by the petitioner and dismissed the appeal placing reliance on the report of the District Panchayat Officer (DPO), which was prior to filing of the earlier writ petition.

The learned Assistant Government Pleader for Panchayat Raj opposed the writ petition. He submits that after receiving the complaint of the villagers alleging that pollution caused by petitioner's chicken shop, the matter was enquired into by the DPO, who opined that the complaint of the villagers is genuine. The matter was sent to the Gram Panchayat for appropriate and necessary action, who passed resolution for removal of the chicken shop. When the petitioner filed appeal before the first respondent, the Counsel for the petitioner and the complainants were heard and basing on the report of the DPO as well as the resolution of the Gram Panchayat, the appeal was rejected. He submits that whether the petitioner's chicken shop is causing pollution in the area is a question of fact. The members of the Gram Panchayat came to such conclusion and directed removal of the shop, even before the DPO inspected the area and submitted a report to the similar effect. When the decision taken by public authority is based on some material, which is relevant – the learned Assistant Government Pleader would urge; this Court cannot go into merits of the case and take an opinion different from that of the public authority.

After giving anxious consideration to the facts of the case and submissions made, this Court is convinced that the question as to whether the petitioner's chicken shop is causing pollution in the area is not justiciable. The Gram Panchayat and its members – it can be presumed; are very much aware of the local conditions and their opinion cannot likely be interfered with. Similarly, the opinion of the DPO that there is pollution in the area cannot be brushed aside. When it is alleged that some commercial activity is causing pollution in the area, the burden that such commercial activity does not cause any pollution or pollution caused is within statutorily permissible limits, lies on the person, who reaps the benefit of that activity. This "precautionary principle", which replaced "polluter pays" principle in Indian Environmental Law applies in this case (see **A.P.Pollution Control Board v Prof.M.V.Nayudu** and **A.P.Pollution Control Board-II v Prof.M.V.Nayudu**) . The petitioner has not placed any material before this Court to discharge the burden, which lies on him. In such background of the matter, the Court cannot ordinarily deviate from the finding recorded by the authorities entrusted with the decision-making in the larger interest of the people, who suffer pollution.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

January 24, 2006.

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